

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VICKI L. SCHORTGEN and DEPARTMENT OF AGRICULTURE,  
FREMONT NATIONAL FOREST, Lakeview, Oreg.

*Docket No. 96-1636; Submitted on the Record;  
Issued June 3, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability commencing February 12, 1993 causally related to the June 29, 1988 employment injury.

The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome and surgical releases appellant underwent on October 21, 1992 and December 14, 1992. Dr. Karl C. Wenner, a Board-certified orthopedic surgeon, released appellant to return to work on February 12, 1993. Appellant was unemployed until September 1993 when she obtained work in the private sector. She worked intermittently in the private sector until June 28, 1994 when her employer replaced her because she could not perform the work due to pain in her arms. On August 8, 1994 appellant filed a claim for a recurrence of disability, Form CA-2a, allegedly occurring on February 12, 1993.

Appellant submitted evidence to support her claim consisting of Dr. Wenner's September 15, 1994 report, her personal statements dated January 11, 1991 and September 7, 1994, progress notes dated from June 29, 1988 through July 13, 1988 from Dr. Hugo Uhland, a Board-certified orthopedic surgeon, a medical report dated April 23, 1990 from Dr. Gerald R. Hartmann, a Board-certified psychiatrist and neurologist, notes from a physical therapist dated January 21, 1993, progress notes dated from April 29 to August 30, 1994 from Dr. Charles D. Bury, a Board-certified family practitioner, and progress notes from Dr. Wenner dated from January 26, 1993 through August 1, 1994. In his August 1, 1994 progress note, Dr. Wenner diagnosed lateral epicondylitis, noted that appellant believed it was related to her June 29, 1988 employment injury and stated that he did not see lateral epicondylitis mentioned in the records. In his August 30, 1994 progress note, Dr. Bury diagnosed epicondylitis and possibly carpal tunnel. He stated he would not accept responsibility "for what is probably a job-related injury."

In his September 15, 1994 report, Dr. Wenner stated that he saw appellant on August 1, 1994, considered her history of injury and noted that she had elbow complaints in 1988. He stated that as he had not seen her in her previous visits to the physician in 1988 he had "no way

of knowing with any certainty whether or not [appellant's condition] is, indeed, job related." Dr. Wenner stated that in reviewing appellant's records of her history, he thought:

"[S]he probably did have something like lateral epicondylitis back in 1988; however, I cannot find any other reference to this since then. ... So, basically, it appears that she had something like lateral epicondylitis in 1988, and by her history has basically had problems with her elbow ever since, although she did not complain much about it. This might suggest some relationship to her previous elbow injury and problems from 1988. There is certainly no way to definitely connect them, given the 6-year interval."

By decision dated November 9, 1994, issued on November 14, 1994, the Office denied the claim, stating that the evidence of record failed to establish that the claimed medical condition or disability was causally related to the June 29, 1988 employment injury

On October 12, 1995 appellant filed another claim for a recurrence of disability, Form CA-2a, allegedly occurring in March 1992. Appellant characterized the recurrence of disability as returning carpal tunnel syndrome manifested by numbness, swelling, pain, loss of dexterity and stamina in her arms and hands while performing her job duties. Appellant stated that these symptoms were the same that she had in 1988. Appellant submitted additional medical evidence to support her claim including progress notes dated October 2, 13 and 30, 1995 from Dr. Scott C. Young, a plastic and hand surgeon, a medical report from Dr. Hartmann, dated October 3, 1991, and nerve conduction studies dated August 30, 1995 interpreted by Dr. Hartmann as showing mild right carpal tunnel syndrome

By decision dated November 8, 1995, the Office denied appellant's claim for the alleged March 1992 recurrence of disability on the grounds the claim was repetitious of the one previously adjudicated in the November 9, 1994 decision.

By letter dated November 14, 1995, appellant, through her attorney, requested reconsideration of the Office's November 9, 1994 decision. Appellant's attorney who was a new attorney for appellant also requested that the Office deliver to her all documents including medical and employment information on which the Office relied in its November 9, 1994 decision. No additional evidence was submitted with the request for reconsideration.

By decision dated January 23, 1996, the Office denied appellant's reconsideration request, noting that appellant had not raised a substantive legal question or included new and relevant evidence.

By letter dated January 23, 1996, appellant's attorney reiterated her request that the original case record be sent to her.

By letter dated February 14, 1996, the Office stated that it was sending appellant's complete case record to her attorney per the attorney's November 14, 1995 request.

By letter dated February 22, 1996, appellant requested reconsideration of the Office's denial of her claim for a recurrence of disability, stating that as the Office's February 14, 1996

letter indicated that her attorney had received the case record on that date and therefore was unable to respond appropriately to the denial.

By letter dated March 7, 1996, the Office stated that appellant's February 22, 1996 letter was being filed with the case but the status of the case was explained in the Office's decisions dated November 8, 1995 and January 23, 1996.

The Board finds that appellant has not established that she sustained a recurrence of disability commencing February 12, 1993 causally related to the June 29, 1988 employment injury.

An individual who claims a recurrence of disability, due to an accepted employment-related injury, has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>1</sup> When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty.<sup>2</sup> As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements.<sup>3</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and supports that conclusion with sound medical reasoning.<sup>4</sup> An award of compensation may not be made on the basis of surmise, conjecture, or speculation or an appellant's unsupported belief of causal relation.<sup>5</sup>

In the instant case, appellant filed one claim for a recurrence of disability commencing February 12, 1993 on August 8, 1994 and her other claim for a recurrence of disability commencing March 1992 on October 12, 1995. Because the Office accepted appellant's claim through February 12, 1993, the date she was released to return to work, appellant's combined claims for recurrences of disability cover the period commencing February 12, 1993. None of the medical evidence appellant submitted addressing her medical condition at or around that time period establishes that her current condition is work related. Since appellant is claiming a recurrence of disability commencing February 12, 1993, Dr. Uhland's progress notes from 1988 and Dr. Hartmann's April 23, 1990 and October 3, 1991 reports are not relevant. The physical therapist's January 21, 1993 report is not probative because a physical therapist is not considered a physician within the meaning of the Act.<sup>6</sup> Dr. Young's progress notes dated October 2, 13,

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<sup>1</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

<sup>2</sup> *George DePasquale*, 39 ECAB 295, 304; *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>3</sup> *Id.*

<sup>4</sup> *See Nicolea Bruso*, 33 ECAB 1138 (1982).

<sup>5</sup> *See William S. Wright*, 45 ECAB 498, 503 (1994).

<sup>6</sup> *See Barbara J. Williams*, 40 ECAB 649, 657 (1988).

and 30, 1995 and the August 30, 1995 nerve conduction studies showing mild right carpal tunnel syndrome are not probative because they do not address causation.<sup>7</sup> Dr. Bury's August 30, 1994 progress note in which he diagnosed epicondylitis and possibly carpal tunnel and stated that appellant's condition was "probably a work-related injury" is insufficient to establish the requisite causation as his opinion is vague and speculative and he provided no rationalized opinion as to how appellant's condition is related to her employment.<sup>8</sup> Further, Dr. Wenner's August 1, 1994 opinion in which he stated that appellant "probably did have something like lateral epicondylitis back in 1988" although he found no reference to it in appellant's records, and the fact that she had problems with her elbow since 1988 suggested some relationship to the June 29, 1988 employment injury but there was "certainly no way to definitely connect them, given the 6-year interval" is vague and uncertain as to the diagnosis and as to the cause of appellant's condition. He does not conclusively relate appellant's current condition to her employment. His opinion as well as his progress notes therefore are insufficient to establish the requisite causal connection between appellant's current condition and her recurrence of disability.<sup>9</sup> Further, epicondylitis was not an accepted condition. Inasmuch as appellant has failed to present medical evidence establishing that her present condition is causally related to her employment, she has failed to meet her burden to establish a recurrence of disability.

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<sup>7</sup> See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>8</sup> See *William S. Wright*, 45 ECAB 498, 504 (1994); *Connie Johns*, 44 ECAB 560, 571 (1993).

<sup>9</sup> *Id.*

Accordingly, the decisions of the Office of Workers' Compensation Programs dated January 23, 1996 and November 8, 1995 are affirmed.

Dated, Washington, D.C.  
June 3, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member